IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 61 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KETU INVESTMENT PVT LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 61 of 1991

MR RK PATEL for Petitioner No. 1

MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following question is referred for our opinion in respect of assessment year 1982-83:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the assessee was not entitled to claim the deduction u/s.80M of the I.T. Act without taking into account the deduction u/s.80K of the Act ?"

2. We have heard Mr RK Patel learned counsel for the assessee and Mr BB Naik learned counsel for the revenue.

3. Our attention is invited to the decision of this Court in CIT vs. Sarabhai & Sons (1995) 211 ITR 20 and also to the decision dated 11-1-2001 in Income Tax Reference No. 15 of 1988 wherein this Court has held that in computing deductions allowable under sub-section (1) of section 80M, the net dividend income should be reduced by the deduction allowable to the assessee under section 80K, as provided in sub-section (2) of section 80M.

Following the aforesaid decision, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

4. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-